

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN QUINTERO,

Case No. 3:16-CV-0673-MMD-CBC

Plaintiff,

ORDER

V.

CONNIE BISBEE, et al.,

Defendants.

12 Before the court is defendants' motion for leave to file plaintiff's presentence
13 investigation report under seal in support of defendants' opposition to plaintiff's motion for
14 summary judgment (ECF No. 100).¹

15 “Historically, courts have recognized a general right to inspect and copy public
16 records and documents, including judicial records and documents.” See *Kamakana v.*
17 *City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (internal quotation
18 marks and citation omitted). “Throughout our history, the open courtroom has been a
19 fundamental feature of the American judicial system. Basic principles have emerged to
20 guide judicial discretion respecting public access to judicial proceedings. These principles
21 apply as well to the determination of whether to permit access to information contained in
22 court documents because court records often provide important, sometimes the only,
23 bases or explanations for a court’s decision.” *Oliner v. Kontrabecki*, 745 F.3d 1024, 1025
24 (9th Cir. 2014) (quoting *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165,
25 1177 (6th Cir. 1983)).

Documents that have been traditionally kept secret, including grand jury transcripts

¹ Although the court has recommended that plaintiff's motion for summary judgment be denied as moot in a separate report and recommendation, the motion to seal remains at issue.

1 and warrant materials in a pre-indictment investigation, come within an exception to the
2 general right of public access. See *Kamakana*, 447 F.3d at 1178. Otherwise, “a strong
3 presumption in favor of access is the starting point.” *Id.* (internal quotation marks and
4 citation omitted). “The presumption of access is ‘based on the need for federal courts,
5 although independent—indeed, particularly because they are independent—to have a
6 measure of accountability and for the public to have confidence in the administration of
7 justice.’” *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1096 (9th Cir.
8 2016), *cert. denied*, 137 S.Ct. 38 (Oct. 3, 2016) (quoting *United States v. Amodeo*
9 (*Amodeo II*), 71 F.3d 1044, 1048 (2nd Cir. 1995); *Valley Broad Co. v. U.S. Dist. Court-D.*
10 *Nev.*, 798 F.2d 1289, 1294 (9th Cir. 1986)).

11 There are two possible standards a party must address when it seeks to file a
12 document under seal: the compelling reasons standard or the good cause standard. See
13 *Center for Auto Safety*, 809 F.3d at 1096-97. Under the compelling reasons standard, “a
14 court may seal records only when it finds ‘a compelling reason and articulate[s] the factual
15 basis for its ruling, without relying on hypothesis or conjecture.’” *Id.* (quoting *Kamakana*,
16 447 F.3d at 1179). “The court must then ‘conscientiously balance[] the competing
17 interests of the public and the party who seeks to keep certain judicial records secret.’” *Id.*
18 “What constitutes a ‘compelling reason’ is ‘best left to the sound discretion of the trial
19 court.’” *Id.* (quoting *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 599 (1978)). “Examples
20 include when a court record might be used to ‘gratify private spite or promote public
21 scandal,’ to circulate ‘libelous’ statements, or ‘as sources of business information that
22 might harm a litigant’s competitive standing.’” *Id.* (quoting *Nixon*, 435 U.S. at 598-99).

23 *Center for Auto Safety* described the good cause standard, on the other hand, as
24 the exception to public access that had been applied to “sealed materials attached to a
25 discovery motion unrelated to the merits of a case.” *Id.* (citing *Phillips ex rel. Estates of*
26 *Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213-14 (9th Cir. 2002)). “The ‘good cause
27 language comes from Rule 26(c)(1), which governs the issuance of protective orders in
28 the discovery process: ‘The court may, for good cause, issue an order to protect a party

1 or person from annoyance, embarrassment, oppression, or undue burden or expense.”
2 *Id.* (citing Fed. R. Civ. P. 26(c)).

3 The Ninth Circuit has clarified that the key in determining which standard to apply
4 in assessing a motion for leave to file a document under seal is whether the documents
5 proposed for sealing accompany a motion that is “more than tangentially related to the
6 merits of a case.” *Center for Auto Safety*, 809 F.3d at 1101. If that is the case, the
7 compelling reasons standard is applied. If not, the good cause standard is applied.

8 Here, defendants seek to file exhibits under seal in connection with their opposition
9 to plaintiff’s motion for summary judgment (ECF No. 99) which is unquestionably “more
10 than tangentially related to the merits of a case.” Therefore, the compelling reasons
11 standard applies.

12 This court, and others within the Ninth Circuit, require a “compelling reason” for
13 sealing records. *Kamakana v. city and County of Honolulu*, 447 F.3d 1172, 1177-85 (9th
14 Cir. 2006). In the instant case, the presentence investigation report contains confidential
15 information concerning the plaintiff, as defined under NRS 176.156. Courts have
16 consistently recognized the need to protect sensitive information in the PSIs as a
17 compelling reason to seal those records. See *Bullock v. Baker*, Case No. 3:14-CV-0139-
18 MMD-VPC, 2015 WL 5165864, at *2 (D. Nev. Sept. 3, 2015); *Bousley v. Neven*, Case
19 No. 2:11-CV-1751-GMN-GWF, 2012 WL 1155735, at *1 (D. Nev. April 6, 2012); *Colato*
20 *v. Le Grand*, Case No. 3:10-Cv-0470-RCJ-VPC, 2011 WL 2651571, at *1 (D. Nev. July
21 5, 2011). Defendants have made an adequate showing of compelling reasons to file the
22 presentence report under seal. The potential harm to the parties’ interests outweighs the
23 public’s right to access to plaintiff’s presentence report.

24 Therefore, defendants’ motion to seal (ECF No. 100) is **GRANTED**. The
25 presentence report was filed and shall remain under seal (ECF No. 101).

26 **IT IS SO ORDERED.**

27 DATED: July 25, 2019.
28


UNITED STATES MAGISTRATE JUDGE